



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: FEBRUARY 14, 2023

IN THE MATTER OF:

Appeal Board No. 626401

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 30, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed October 14, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked full-time for an insurance company as an assistant to the office manager, from January 2022 until June 29, 2022. Her work schedule was set as Monday through Friday, 9 a.m. to 5 p.m. In April 2022, the claimant had family issues and found it very difficult to work five days a week. She considered resigning but wanted to continue to work for the employer. She told the office manager that she could not work full-time anymore and needed a three-day work week. The office manager directed the claimant to discuss this with the president of the company.

The claimant then talked to the president about her need for a reduced work schedule, indicating during their discussion that she was prepared to submit a

resignation letter because she could no longer work full-time. The president agreed to try a three-day schedule; because the office was busy and the claimant's need to work part-time was not urgent, it was decided that the reduced schedule would begin in the last week of June.

The president subsequently determined that the office was too busy to permit a reduced schedule for the claimant and made the decision to terminate her employment. Because the claimant was absent due to illness at the time, he planned to tell her when she reported to work on June 29, the date that she was also scheduled to begin the part-time schedule. When the claimant reported to work that morning, the president informed her that the reduced schedule did not align with the office's needs and that he had found someone else to work in her position full-time. He did not offer her the opportunity to continue as a full-time employee because he believed that she did not want to work full-time.

OPINION: The credible evidence establishes that the claimant's employment ended involuntarily on June 29, 2022, when the employer advised her that he had changed his mind about letting her work part-time and had replaced her with a full-time worker. It is not controlling that the claimant's reasons for reducing her full-time schedule to part-time may have been non compelling or that she may have threatened to quit two months earlier if she did not receive a reduced schedule. Having initially agreed to the change, the employer's unilateral decision to subsequently end the claimant's employment constitutes a discharge. Under these circumstances, the claimant cannot be held subject to a disqualification from benefits on the basis that she voluntarily left her employment without good cause. Accordingly, we conclude that her employment ended under nondisqualifying conditions.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 30, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER